

PROCEDURE FOR ADOPTION, AMENDMENT OR REPEAL OF STATE BAR REGULATIONS

~~(Adopted by the Board of Governors September 7, 1996)~~

§1. PURPOSE AND GOALS.

The purpose of this Procedure for ~~A~~a adoption, Amendment or Repeal of State Bar Regulations (hereafter “procedures”), is to establish basic minimum procedural requirements for the adoption, amendment or repeal of State Bar ~~r~~Regulations. The primary goal of these procedures is to provide interested individuals or entities with adequate notice of and time to comment on proposals to adopt, amend or repeal State Bar ~~r~~Regulations.

§2. DEFINITIONS.

For purposes of these procedures, the following definitions shall apply:

(A)- State Bar ~~r~~Regulation. The term “State Bar ~~r~~Regulation(s)” shall consist of, but shall not be limited to the following:

1. Rules and Regulations enacted pursuant to California Business and Professions Code section 6025, including any rules subject to the approval of the California Supreme Court;
2. Proposed amendments to the California Rules of Court prior to their submission to the California Supreme Court for approval;
3. Rules of Professional Conduct;
4. Rules Regulating Admission to Practice Law in California; and
5. Any other rules, regulations or procedures that govern the State Bar or its

Board of Governors, Board ~~e~~Committees, committees, commissions or programs.

~~— The term “State Bar regulation(s)” shall not include those rules, regulations or procedures which: (a)~~

~~(B) Change. The term “change” shall include adoption, amendment or repeal.~~

~~(C) Responsible Person. The term “Responsible Person” shall refer to the State Bar employee who is primarily responsible for preparing and coordinating the Notice of Public Comment and to whom inquiries regarding a proposed change or written comments may be forwarded.~~

~~(D) Board Committee. The term “Board Committee” shall include committees of the State Bar’s Board of Governors, composed solely of members of the Board of Governors.~~

§3. CHANGES NOT SUBJECT TO PUBLIC COMMENT PROCEDURES

~~(A) Changes that relate solely to the internal management of the State Bar, such as rules pertaining to employer-employee relations, or procedures which have as their sole purpose the governance of the internal organization of any State Bar departments or offices; or (b) are contained in statutes.~~

~~— (B). Change. The term “change” shall include adoption, amendment or repeal.~~

~~— (C). Material change. The term “material change” is defined as a substantive change that goes to the merits of a State Bar regulation rather than to its form.~~

~~— (D). Responsible person. The term “responsible person” shall refer to the State Bar employee to whom inquiries regarding a proposed change or written comments may be forwarded.~~

(B) Changes that are of a non-substantive technical nature. These changes may include, but are not limited to:

1. Renumbering, reordering or relocating a regulation.
2. Revising syntax, grammar, or punctuation.
3. Revising clerical errors or omissions.
4. Changing an “authority” or “reference” citation for a regulation.
5. Changes that are made in order to conform to or comply with statutory, case law, or constitutional requirements.

§4. REQUIREMENTS FOR CHANGING A STATE BAR REGULATION.

~~(A). These procedures shall not apply to proposed changes in State Bar regulations which are not material changes.~~

(A) Except as provided by ~~section~~sections 11 and 12 of these procedures, or as otherwise provided by law, the adoption, amendment or repeal of a State Bar ~~r~~Regulation shall not become operative until the proposed change has been made available for public comment for ninety (90) days and until a Notice of ~~Proposed Action~~Public Comment has been published in accordance with section 56 herein. The State Bar Board of Governors (hereafter “Board” or “Board of Governors”) or Board Committee shall determine the appropriate length of a public comment period up to a maximum of one (1) year.

(B) The Board or Board Committee may shorten the ninety (90) day public comment period, if, in its discretion, it determines that a shortened public comment period is necessary, but in no event shall the comment period be less than thirty (30) days. In exercising its discretion, the Board of ~~Governors~~Board Committee shall consider

the following factors: the complexity of the proposed change; the number of individuals or organizations likely to be affected by the proposed change; the reasons why urgency is required; and any other facts or circumstances which the Board or Board Committee deems relevant to its determination.

§45. PRIOR AUTHORIZATION FOR PUBLICATION AN COMMENT.

No proposed change to a State Bar ~~r~~Regulation shall be made available for publication or comment, except by the specific authorization of the Board of Governors or Board Committee. Such specific authorization shall explicitly state that the authorization is not a statement of approval of the proposed change.

**§56. PREPARATION AND PUBLICATION OF NOTICE OF ~~PROPOSED ACTION~~
PUBLIC COMMENT.**

- (A)- Upon authorization for publication and comment by the Board or Board Committee in accordance with section ~~4~~5 of these procedures, appropriate staff members shall prepare a Notice of ~~Proposed Action~~Public Comment ("Notice"). Said Notice shall contain the information set forth in section ~~6~~7 of these procedures.
- (B)- Unless an alternative publication method is approved by the Board or Board Committee, a Notice shall be published in a suitable format:
- (1). ~~i~~in at least one issue of the California Bar Journal; ~~and~~or
- (2). ~~i~~in a public comment section of the State Bar's Internet Web Site, or its equivalent, for the duration of the public comment period~~;~~
- (C) In addition, if the Board or Board ~~Committee in consultation with the Public Comment Coordinating~~ Committee determines that a proposed change is likely to

generate significant public interest or have significant public impact, it may authorize the State Bar's Office of ~~Communications~~Media & Information Services, its successor, or its designee, to disseminate the Notice to the ~~persons,~~ media, consumer groups, organizations or other such entities or individuals, as may be appropriate.

§67. CONTENTS OF NOTICE OF ~~PROPOSED ACTION.~~ PUBLIC COMMENT.

(A) The Notice of Public Comment should include the following information:

1. The name, title or source of the proposed change;
2. The date the Board or Board Committee made the proposed change available for public comment;
3. Title and citation to the particular State Bar ~~r~~Regulation which is the subject of the proposed change, and a clear, concise and brief statement of the proposed change;
4. A brief synopsis of the proponent's rationale for the change;
5. A brief synopsis of ~~the rationale for the~~any opposition, ~~if any,~~ to the change;
6. Any known fiscal and personnel impact of the proposed change;
7. The name, address and phone number of the responsible person to whom inquiries regarding the proposed change and written comments may be directed;
8. The date by which written comments must be received;
9. If applicable, the date, time and location of any scheduled public hearing and the name, address and phone number of the person to whom inquiries regarding the public hearings may be directed; and

10. A statement that authorization for public comment does not constitute the Board of Governors' approval of the proposed change. The statement should be in the following or substantially the following form: "This authorization for public comment circulation shall not be construed as a statement of approval of the proposed revisions."

~~§7. AVAILABILITY OF FULL WRITTEN EXPLANATION OF PROPOSED CHANGE.~~

~~Upon request, the responsible person identified in paragraph g. of~~

- (B) The Responsible Person, shall provide this Notice to the State Bar's Office of Media & Information Services, its successor, or its designee, for publication in accordance with section 6 of these procedures.

§8. AVAILABILITY OF PROPOSED CHANGES, NOTICES, AND COMMENTS.

- (A) The Responsible Person, shall prepare and send a copy of the proposed change and Notice to the State Bar's Office of the Secretary, or its designee.
- (B) All comments received on proposed changes to a State Bar Regulation shall be maintained by the Responsible Person. The comments shall become part of the public record and shall ultimately be transmitted to and maintained by the State Bar's Office of the Secretary, or its designee.
- (C) Upon request, the Responsible Person, shall make available for inspection and copying the full text of the proposed change~~and a full written explanation of the proposed change.~~

~~§8. OFFICE OF SECRETARY AS REPOSITORY OF NOTICES.~~

~~For the entire public comment period, the State Bar Office of the Secretary shall~~

~~maintain a copy of the proposed change and the Notice for public inspection and copying.~~
~~Further, upon request, the Notice, and all public comments received.~~

~~(D) Throughout the process, the Office of the Secretary, or its designee, shall make will
be available to ~~any interested individual or organization~~ a full written explanation of
the proposed change, in accordance with section 7 of these procedures. offer
assistance should questions arise.~~

~~(E) Reimbursement to the State Bar for the costs of reproducing and mailing the
documents may be required.~~

§9. CONSIDERATION OF PUBLIC COMMENTS.

After the close of a public comment period but prior to enactment of a proposed change, either the Board of Governors or a Board Committee shall review and consider all public comments received by the State Bar.

~~§10. CREATION AND COMPOSITION OF PUBLIC COMMENT COORDINATING GROUP.~~

~~— A Public Comment Coordinating Group shall be created and shall consist of:~~

~~— a. The Senior Executive of the State Bar Office of Communication and Public
Education of his/her delegatee:~~

~~— b. The Secretary of the State Bar; and~~

~~— c. A member of the Board of Governors Communications and Bar Relations
Committee, or his/her delegatee, appointed by the President for a period of
one year. A member may be appointed for three (3) consecutive years.~~

~~§11. SCOPE OF DUTIES OF PUBLIC COMMENT COORDINATING GROUP.~~

- ~~— The Public Comment Coordinating Group shall:~~
- ~~— (A). oversee the public comment process generally;~~
- ~~— (B). promulgate, review and periodically amend as needed, State Bar inter-office guidelines which aid State Bar staff in complying with these public comment procedures;~~
- ~~— (C). resolve any major issues or disputes among staff which may arise regarding application of these procedures or the inter-office guidelines; and~~
- ~~— (D). make recommendations, as necessary, to the Board of Governors or appropriate Board committee regarding whether these procedures should be amended.~~

§120. ACTION ON REGULATION MODIFIED FROM THAT WHICH WAS MADE AVAILABLE FOR COMMENT.

(A) If, after Notice and public comment, a proposed change is modified from that which was made available for comment, no additional Notice and public comment period shall be required as long as the modification is:

1. Not material or is solely grammatical in nature, such as provided for in section 3(B) of these procedures; or
2. The modification is sufficiently related to the proposal made available for comment such that it is reasonable to conclude that interested or affected individuals or entities were provided with adequate notice that the modification could have resulted from the originally proposed change.

(B) In all other cases, unless otherwise subject to the emergency provisions of section 131 herein, the modification, prior to its enactment, must be made available for an additional public comment period in accordance with these procedures.

§131. EMERGENCY PROVISION.

In its discretion, the Board of Governors or Board Committee may from time to time determine that emergency circumstances justify the immediate enactment of a proposed change to a State Bar ~~r~~Regulation without opportunity for public comment.

If the Board or Board Committee determines that an emergency exists such that waiver of any Notice or public comment period becomes necessary, the Board shall enact the proposed change as an interim measure only. Thereafter, as soon as practicable, but no later than one hundred twenty (120) days from the date of the enactment of the interim measure, the Board or Board Committee shall comply with the Notice and public comment provisions of these procedures. After duly considering all public comments, the Board may then permanently enact the proposed change in accordance with these procedures.

No interim measure enacted pursuant to this section shall remain in effect for more than one hundred twenty (120) days unless the State Bar complies with the Notice and public comment procedures contained herein.

§142. PUBLIC HEARINGS.

~~While these procedures do not require that public hearings be held on proposed changes to State Bar ~~r~~Regulations, the materials presented to the Board or Board Committee requesting the authorization required by section 4 of these procedures shall include a recommendation as to whether public hearings should be held and a brief statement as to the facts supporting the recommendation.~~

~~——~~ ~~if. However, if a public hearing is held, all statements, either oral or in writing, shall be permitted and the hearing shall be recorded, either through a transcript or some other~~

mechanism by which an accurate written record can be made.

~~§15. COMMENTS RECEIVED ARE PUBLIC RECORD AND AVAILABLE FOR REVIEW.~~

~~All comments received on proposed changes to a State Bar Regulation shall become part of the public record and shall be made available to all interested parties, upon request. Reimbursement to the State Bar for the costs of reproducing and mailing the comments may be required.~~

~~§16~~3. PUBLICATION OF STATE BAR REGULATIONS.

All State Bar ~~r~~Regulations shall be published in a manner to be determined by the State Bar.

~~§17~~4. EFFECTIVE DATE FOR ADOPTION, AMENDMENT OR REPEAL OF STATE BAR REGULATIONS.

~~(A). Except as provided in subsection (B) of this section, t~~Ihe adoption, amendment or repeal of a State Bar ~~r~~Regulation shall become effective upon the date specified by the Board:

~~(B). Unless adopted on an urgency basis, a Rule of Procedure of the State Bar adopted, amended or repealed by the Board shall become effective on the January 1st or July 1st next following a 90-day period from the date of adoption, amendment or repeal, whichever is earlier. An urgency basis for adoption, amendment or repeal of a Rule of Procedure shall exist where an earlier action by the Board is required by statute or by direction of, or if applicable, the date specified by~~ the California Supreme Court.